



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent and utilities. The landlords also requested authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I noted that neither party had submitted any documentary evidence prior to the hearing. Accordingly, this decision reflects verbal testimony only.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to a Monetary Order for unpaid rent and utilities?
3. Are the landlords authorized to retain the security deposit?

Background and Evidence

I heard undisputed testimony as follows:

- The tenancy commenced in December 2012;
- The tenant paid a \$225.00 security deposit;
- The tenant is required to pay rent of \$450.00 on the 1st day of every month;
- The tenant received a 10 Day Notice to End Tenancy for Unpaid Rent dated April 2, 2013 indicating rent of \$450.00; and,
- The tenant has not paid rent for April 2013 or May 2013 and continues to occupy the rental unit.

The parties were in dispute as to whether the tenant is required to pay utilities. The tenant stated the 10 Day Notice dated April 2, 2013 does not indicate utilities are

outstanding. The landlord testified that the 10 Day Notice indicates \$200.00 - \$300.00 in utilities as outstanding but was uncertain as to the exact amount. The landlord acknowledged that copies of utility bills had not been provided the tenant since early on in the tenancy.

The tenant complained that the landlords have entered the unit unlawfully and have terminated services or facilities. Without hearing the landlords' response or making a finding that the tenant's complaints have merit, I cautioned the landlords that until such time the tenant vacates the rental unit or is lawfully removed from the property the landlords must not breach the Act with respect to entering the unit or terminating services or facilities. The parties were informed that violations of the Act or tenancy agreement by the landlords may entitle the tenant to file an Application for Dispute Resolution seeking damages or loss against the landlords.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Based upon the testimony presented to me, I find the tenant failed to pay rent for April 2013 and received a 10 Day Notice dated April 2, 2013. As more than five days have passed since the tenant received the 10 Day Notice and the tenant did not pay the outstanding rent or file to dispute the 10 Day Notice I find the tenancy has ended for unpaid rent. Therefore, I am satisfied the landlords entitled to regain possession of the unit and I provide the landlords with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the undisputed evidence presented to me, I also find the landlords entitled to recover unpaid and/or loss of rent in the amount of \$900.00 for the months of April 2013 and May 2013. I dismiss the landlord's claims to recover utilities as I am unsatisfied by the disputed verbal evidence and the lack of documentary evidence that the tenant is required to pay utilities, or if she is, the amount payable by the tenant.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the rent owed. I make no award for recovery of the filing fee given the landlord's lack of preparation for this hearing.

In light of the above, the landlords are provided a Monetary Order in the amount of \$675.00 [\$900.00 rent – 225.00 security deposit].

Conclusion

The landlords have been provided an Order of Possession for unpaid rent to serve upon the tenant. The landlords have been authorized to retain the security deposit and have been provided a Monetary Order for the balance of \$675.00 to serve and enforce as necessary.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 09, 2013

Residential Tenancy Branch

